

Issued in Washington, D.C., September 8, 1995.

**Christine A. Ervin,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

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BILLING CODE 6450-01-P

## 10 CFR Part 830

[Docket No. NE-RM-91-830]

RIN 1901-AA34

### Nuclear Safety Management

## 10 CFR PART 834

[Docket No. EH-RM-93-834]

RIN 1901-AA38

### Radiation Protection of the Public and the Environment

**AGENCY:** Department of Energy.

**ACTION:** Notice of corrections and extension of comment periods.

**SUMMARY:** On August 31, 1995, the Department of Energy (DOE) published a document (60 FR 45382) to reopen the comment periods with respect to the ongoing rulemakings concerning 10 CFR Parts 830 and 834. This document indicated that draft regulatory language and a discussion of the regulatory system under development would be available through the internet. An incorrect internet address, however, appeared in the document. The correct address is gopher://nattie.eh.doe.gov:2011/11/.Drafts. The document also incorrectly cited the DOE Standard that discusses hazard categories. The correct citation is DOE Standard 1027. In light of these corrections, DOE is extending the comment periods.

**DATES:** Written comments (11 copies) must be received by the Department on or before October 13, 1995.

**ADDRESSES:** Part 830: Written comments on Part 830 (11 copies) should be addressed to PART 830, Mr. Orin Pearson, U.S. Department of Energy, Office of Environment, Safety and Health, EH-10, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Part 834: Written comments on Part 834 (11 copies) should be addressed to PART 834, Mr. Andrew Wallo, U.S. Department of Energy, Office of Environment, Safety and Health, EH-412, 1000 Independence Avenue SW., Washington, D.C. 20585.

Internet: The draft regulatory language for Part 830 and for Part 834, as well as the draft discussion of the regulatory

system under development, is available on the internet at gopher://nattie.eh.doe.gov:2011/11/.Drafts.

### FOR FURTHER INFORMATION CONTACT:

Part 830: Mr. Richard Stark, U.S. Department of Energy, Office of Environment, Safety and Health, EH-31, 19901 Germantown Road, Germantown, Maryland 20874-1290, (301) 903-4407.

Part 834: Mr. Andrew Wallo, or Mr. Harold T. Peterson, Jr., U.S. Department of Energy, Office of Environment, Safety and Health, EH-412, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586-2409, fax (202) 586-3915.

Written Comments: Ms. Andi Kasarsky, (202) 586-3012.

Issued in Washington, DC on September 7, 1995.

**Douglas W. Smith,**

*Acting Deputy General Counsel For Energy Policy.*

[FR Doc. 95-22626 Filed 9-12-95; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

## 12 CFR Part 2

[Docket No. 95-23]

RIN 1557-AB49

### Sales of Credit Life Insurance

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing credit life insurance and the disposition of credit life insurance income. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

The proposal eliminates unnecessarily detailed provisions, reorganizes sections of the rule into a more helpful format, and refocuses the regulation to address areas presenting the greatest safety and soundness concerns.

**DATES:** Comments must be received by November 13, 1995.

**ADDRESSES:** Comments should be directed to: Docket 95-23, Communications Division, 250 E Street, SW, Washington, DC 20219, Fax (202)874-5274. Comments will be

available for public inspection and photocopying at the same location.

### FOR FURTHER INFORMATION CONTACT:

Stuart E. Feldstein, Senior Attorney, Legislative and Regulatory Activities, (202) 874-5090.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to revise 12 CFR part 2 as part of its Regulation Review Program. The goal of the Program is to eliminate provisions in the OCC's regulations that impose unnecessary regulatory burdens and do not contribute significantly to maintaining the safety and soundness of national banks or accomplishing the OCC's other statutory responsibilities. By simplifying and clarifying the regulation, the proposal is intended to better focus on the standards and principles to which national banks should adhere when they furnish credit life insurance to customers.

### Background

The OCC issued a final rule to establish part 2 in 1977, 42 FR 48518 (September 23, 1977), to regulate the disposition of income from the sale of credit life insurance by national banks to loan customers of the bank. The regulation addressed the practice where employees, officers, directors, and principal shareholders, or their related interests, diverted income from the sale of credit life insurance to their benefit rather than to the bank. The OCC noted at the time that "[T]he proposal was premised on the judgment that income earned from credit life insurance sales to bank customers by bank officers using bank premises and good will in the creation of bank assets (loans) should be credited to bank earnings rather than be paid directly to and retained by officers, directors or selected stockholders." *Id.*

The regulation also addressed a number of related safety and soundness concerns. For example, there is an inherent conflict of interest when a loan officer's receipt of commissions from the sale of credit life insurance is dependent on the volume of loans made. This prospect of financial reward based solely upon loan volume may induce loan officers to make financially unsound loans. *See also, First National Bank of La Marque v. Smith*, 610 F.2d 1258 (5th Cir. 1980) ("When loan officers are allowed to retain commissions, the prospect of personal financial gain is interjected into the lending decision."). Additional safety and soundness concerns cited when the rule was adopted included: (1) that arrangements permitting employees, officers and directors to use bank premises and goodwill for personal profit were inimical to the trust and

confidence depositors place in financial institutions; (2) that the acquisition of a bank by investors who rely on the credit life insurance income to service their debt was inherently unsafe and unsound because it decreases their interest in running a profitable bank; and (3) that incentives to increase bank profits were diminished if money was distributed other than through dividends. See, 41 FR 29846 (July 20, 1976); 42 FR 48518 (September 23, 1977).

In 1982, the OCC amended part 2 to incorporate certain recommendations of the Federal Financial Institutions Examination Council. Among other things, these amendments clarified that bank officers and employees could participate in limited bonus and incentive plans notwithstanding the prohibition on receiving income derived from the sale of credit life insurance. The amendments also revised a provision permitting income from the sale of credit life insurance to be credited to a holding company affiliate of the bank by requiring the affiliate to "reasonably compensate" the bank for the use of its premises, personnel, and goodwill. 47 FR 31376 (July 20, 1982).

### Proposal

The OCC is committed to safeguarding national banks from the inappropriate practices that gave rise to the promulgation of part 2, and is not proposing to diminish the fundamental standards reflected in the current rule. Rather, the proposal reduces the overly detailed format of the current rule, seeks comment on additional streamlining, and reorganizes the rule into more readable and understandable provisions that focus on the safety and soundness concerns and fiduciary principles that are the objectives of the regulation.

### Section 2.1—Authority, Purpose, and Scope

The proposal removes current § 2.1 as unnecessary. The proposal adds an "Authority, purpose, and scope" section that briefly describes the objectives and scope of the regulation. The section also restates language in current § 2.6 relating to national bank authority to furnish credit life insurance under 12 U.S.C. 24 (Seventh). These revisions do not expand or otherwise modify the authority of national bank's to furnish credit life insurance under 12 U.S.C. 24 (Seventh).<sup>1</sup>

<sup>1</sup> *IBAA v. Heimann*, 613 F.2d 1164, (D.C. Cir. 1979), cert. denied, 449 U.S. 823 (1980) (upholding national bank authority to sell credit life insurance). See also examples of other OCC precedent on furnishing credit life insurance: Interpretive Letter No. 277 (December 21, 1983) reprinted at [1983–

### Section 2.2—Definitions

The definitions in current § 2.3 are amended to reflect minor wording changes. In addition, the OCC requests comment as to whether the scope of the definition of "credit life insurance" is appropriate.

### Section 2.3—Distribution of Credit Life Insurance Income

The proposal also contains a simplified statement of the methods by which credit life insurance may be sold by national banks. The current regulation requires income derived from the sale of credit life insurance by national bank insiders to loan customers of the bank to be credited to the bank rather than to the bank insiders or entities in which they have a material interest. In connection with the initial Notice of Proposed Rulemaking in 1976, some commenters argued that certain state laws prohibited the assignment of commissions to the bank and, thus, contradicted the OCC's requirement to credit income from the sale of the credit life insurance to the bank. In response to this concern, current § 2.6 contains a list of OCC approved methods of distribution of credit life insurance income that are alternatives to the assignment of commissions to the bank. Section 2.6 also states that other methods satisfying the requirements of current § 2.4 are acceptable.

The current rule provides banks with some certainty about the types of methods that are acceptable. However, these examples do not appear to be needed as part of the regulation, and may, in practice, be unduly restrictive and confusing. Therefore, the OCC is proposing to remove the list of approved alternative methods and substitute a simple statement that the means of distribution of credit life insurance income must be consistent with the requirements and principles of proposed § 2.3.

These requirements include a provision that prohibits bank insiders from retaining commissions or other income from the sale of credit life

1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,441 (credit life insurance permissible as an incidental power under 12 U.S.C. 24(Seventh)); Interpretive Letter No. 283 (March 16, 1984) reprinted at [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,447 (sales of credit life and disability insurance as agent for the insurer or by other arrangement as an incidental power); Letter from James G. Orie, Attorney, OCC Law Department (January 28, 1987); Letter from Ford Barrett, Assistant Director, Legislative and Regulatory Analysis (December 13, 1984); Letter from Richard V. Fitzgerald, Director, Legal Advisory Services Division (May 12, 1980); Letter from Robert Bloom, First Deputy Comptroller for Policy (June 29, 1976); and Letter from Joe H. Selby, First Deputy Comptroller for Operations (June 30, 1976).

insurance to loan customers of the bank, subject to certain exceptions for bonus and incentive plans.

In addition, the proposal also clarifies that it is unsafe and unsound for a director, officer, employee, or principal shareholder of a national bank, (*i.e.* a shareholder that directly or indirectly owns five percent or more of the bank's stock), or an entity in which any such person has an interest of five percent or more, involved in the sale of credit life insurance to bank loan customers to take advantage of that business opportunity for personal profit. This provision revises current § 2.4(a) to reinforce the core principle that income derived from the opportunity created by the bank should be credited to the bank.

The OCC requests commenters to address whether the five percent ownership test for a "principal shareholder" and for covered entities in which insiders have an interest is an appropriate level to use in these contexts, and, if not, what alternative percentages or more flexible standards would be appropriate. For example, the OCC notes that a "principal shareholder" for purposes of insider lending standards is defined with a ten percent voting stock ownership test. 12 CFR 215.2(m)(1).

The OCC also requests commenters to address whether the prohibition against the retention of income derived from the sale of credit life insurance should apply to sales of credit life insurance to loan customers of an affiliate bank.

Subject to various safeguards, the OCC permits national banks to share space and employees with entities other than depository institutions. See 42 FR 11924 (March 3, 1995) (Proposed revisions to part 7, the OCC's interpretive rulings.) In some instances, the bank and another entity that uses bank premises may share employees to sell products, which may include credit life insurance, to the bank's customers. To the extent these shared employees receive commissions from the sale of the credit life insurance, the arrangement arguably falls within the prohibitions contained in the current rule, as well as this proposal.

Possible solutions to this issue include a prohibition on commissions received from the sale of credit life insurance by bank employees to the bank's customers, a requirement that the bank be compensated in some fashion, and/or a standard excluding certain types of dual employees from the scope of part 2. The OCC is mindful of not placing impediments to multi-product arrangements that are beneficial to banks and bank customers and have not been the source of problems or abuses.

However, the OCC also must exercise effective oversight where legitimate safety and soundness concerns may arise.

The OCC therefore requests comment on the treatment and compensation of employees shared with a non-bank entity that sells credit life insurance to the bank's customers.

Section 2.4(b) of the current regulation, originally adopted in 1977, permits income from the sale of credit life insurance to be credited to a holding company affiliate of the bank or to a trust for the benefit of all bank shareholders. A subsequent amendment to part 2 in 1982 required the holding company affiliate or trust to pay "reasonable compensation" to the bank for the use of its personnel and premises. 47 FR 31376 (July 20, 1982).

The OCC requests comment on whether to retain these provisions in the final rule or whether they are no longer necessary or used. If commenters propose retaining these provisions, the OCC also requests comment on whether comparable provisions should apply to affiliates not in a holding company structure.

#### *Section 2.4—Bonus and Incentive Plans*

Current § 2.4(a) permits limited bonus and incentive arrangements for employees and officers, notwithstanding the general prohibition against paying insiders income derived from the sale of credit life insurance to loan customers. Under the current rule, bonus or incentive payments based on credit life insurance sales may be made not more frequently than quarterly, and may not exceed in any one year five percent of the recipient's annual salary or five percent of the average salary of all loan officers participating in the plan. The proposal retains this condition with some minor wording changes to make the provision simpler and more understandable.

The OCC is concerned, however, that these restrictions may be too rigid. Therefore, commenters are specifically asked to address whether this periodic payment standard and the two percentage limits are appropriate safeguards for bonus and incentive programs, and, if not, what alternative safeguards the OCC should adopt that would deter inappropriate sales activities by insiders in connection with the sale of credit life insurance.

The proposal also adds a new provision that requires the bank not to structure its bonus or incentive plans in a manner that could create incentives for persons selling credit life insurance to provide inappropriate recommendations or sales of credit life

insurance to customers of the bank. This provision is intended to protect consumers by requiring banks to address potential conflicts of interest that arise when loan officers also sell credit life insurance.

#### *Other Changes*

The proposal removes current § 2.5 which relates to director responsibilities since that issue is already considered in another section of the proposal. Current § 2.5 only addresses directors, and requires them to observe the requirements in § 2.4 and to be mindful of their duty under common law and 12 U.S.C. 73 to promote the interest of the bank over their personal interests. This section merely restates common law and statutory requirements. Moreover, the same basic fiduciary principles apply to bank officers and other employees involved in credit life insurance sales as well as to directors. The proposal states these principles in § 2.3(c), and applies them to all categories of bank officials and employees engaged in credit life insurance sales.

The proposal also removes current § 2.7 where the Comptroller reserves the authority to modify the applicability of any part of part 2 based on the particular circumstances of the bank. The OCC has rarely used this section. The OCC will continue to consider requests for interpretations of part 2 on a case-by-case basis.

The OCC welcomes comments on any aspect of the proposed regulation, particularly those issues specifically noted in this preamble.

#### DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 2.1 .....	§§ 2.1, 2.2, 2.6.	Modified.
§ 2.2 .....	§ 2.3 .....	Modified.
§ 2.3 .....	§§ 2.4(a), (b), 2.6.	Modified.
§ 2.4(a), (c) .....	§ 2.4(a), (c) ..	Modified.
§ 2.4(b) .....	.....	Added.
	§ 2.5 .....	Removed.
	§ 2.7 .....	Removed.

#### **Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and

clarifying existing regulatory requirements.

#### **Executive Order 12866**

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

#### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden and increasing the flexibility of national banks, consistent with safe and sound banking practices.

#### **List of Subjects in 12 CFR Part 2**

Credit, Life insurance, National banks.

#### **Authority and Issuance**

For the reasons set out in the preamble, part 2 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

#### **PART 2—SALES OF CREDIT LIFE INSURANCE**

Sec.

- 2.1 Authority, purpose, and scope.
- 2.2 Definitions.
- 2.3 Distribution of credit life insurance income.
- 2.4 Bonus and incentive plans.

**Authority:** 12 U.S.C. 24 (Seventh), 93a, and 1818(n).

##### **§ 2.1 Authority, purpose, and scope.**

(a) *Authority.* A national bank may furnish credit life insurance to loan customers pursuant to 12 U.S.C. 24 (Seventh).

(b) *Purpose.* The purpose of this part is to set forth the principles and

standards that apply to a national bank's sale of credit life insurance, and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank.

(c) *Scope.* This part applies to sales of credit life insurance by any national bank employee, officer, director, or principal shareholder, and certain entities in which they have interests.

## 2.2 Definitions.

(a) *Credit life insurance* means credit life, health, and accident insurance.

(b) *Interest* includes:

(1) Ownership through a spouse or minor child;

(2) Ownership through a broker, nominee, or other agent; or

(3) Ownership through any corporation, partnership, association, joint venture, or proprietorship, that is controlled by a director, officer, employee, or principal shareholder of the bank.

(c) *Officer, director, employee, or principal shareholder* includes the spouse and minor children of an officer, director, employee, or principal shareholder.

(d) *Principal shareholder* means any shareholder who directly or indirectly owns or controls an interest of more than five percent of the bank's outstanding shares.

## § 2.3 Distribution of credit life insurance income.

(a) The means of distribution of credit life insurance income employed by a national bank must be consistent with the requirements and principles of this section.

(b) Except as provided in § 2.4, a director, officer, employee, or principal shareholder of a national bank, or an entity in which such person has a voting interest of five percent or more, may not retain commissions or other income from the sale of credit life insurance in connection with any loan made by that bank.

(c) It is an unsafe and unsound practice for any director, officer, employee, or principal shareholder of a national bank, (including any entity in which such a person has a voting interest of five percent or more), who is involved in the sale of credit life insurance to loan customers of a national bank, to take advantage of that business opportunity for personal profit. Income derived from credit life insurance sales to loan customers must be credited to the income accounts of the bank and not to the bank's employee, director, officer, or principal shareholder, or to an entity in which

such a person has a voting interest of five percent or more.

## § 2.4 Bonus and incentive plans.

(a) A bank employee or officer may participate in a bonus or incentive plan based on the sale of credit life insurance if the following conditions are satisfied:

(1) Payments based on credit life insurance sales are made not more frequently than quarterly; and

(2) Payments to any individual in any one year do not exceed the greater of:

(i) Five percent of the recipient's annual salary; or

(ii) Five percent of the average salary of all loan officers participating in the plan.

(b) The bank may not structure its incentive or bonus program in a manner that creates incentives for an individual to make inappropriate recommendations or sales to customers of the bank.

(c) Nothing contained in this part prohibits a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, or goodwill. However, the employee, officer, director, or principal shareholder shall turn over to the bank as compensation all income received from the sale of the credit life insurance to the bank's loan customers.

Dated: September 7, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95-22699 Filed 9-12-95; 8:45 am]

BILLING CODE 4810-33-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-NM-212-AD]

#### Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. This proposal is prompted by a report of failure of an engine power cable, which could cause loss of function of the

power control levers on the console. The actions specified by the proposed AD are intended to prevent loss of function of the levers on the console and subsequent loss of normal control of engine power.

**DATES:** Comments must be received by October 23, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-212-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped